

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

RC ALUMINUM INDUSTRIES, INC.
AND RC ERECTORS, INC.¹

Employer

and

Case 12-RC-8506

LOCAL UNION NO. 272 AND SHOPMEN'S LOCAL UNION NO. 698
OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL,
ORNAMENTAL, AND REINFORCING IRONWORKERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. Local Union No 272 and Shopmen's Local Union No. 698 of the International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers, AFL-CIO, jointly, the Petitioner, claim to represent certain employees of the Employer and are labor organizations within the meaning of Section 2(5) of the Act.⁴

¹ The name of the Employer reflects my single employer finding discussed below.

² The post-hearing brief filed by RC Aluminum Industries, Inc. has been carefully considered.

³ The parties stipulated that RC Aluminum Industries, Inc. is a Florida corporation with an office and place of business in Miami, Florida, where it engages in the business of manufacturing and installing windows, handrails, and doors. During the past 12 months, RC Aluminum Industries, Inc. purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of Florida. Accordingly, I find that the Employer is engaged in commerce. See Key Coal Co., 240 NLRB 1013 (1979).

⁴ The parties stipulated that Local Union No. 272 is a labor organization. The record evidence establishes that Shopmen's Local Union No. 698 has existed since 1949. The record evidence further shows that Shopmen's Local Union No. 698 is an organization in which employees participate and that it exists, at least in part, for dealing with employers concerning conditions of work. The record further reflects that it has collective bargaining agreements

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and 2(7) of the Act.

The Petitioner seeks to represent a unit of full-time production and maintenance employees and installers employed by RC Aluminum Industries, Inc. (herein called "RCA"). The Petitioner also seeks to include installers employed by RC Erectors, Inc. (herein called "RCE") in the unit asserting that RCA and RCE are a single employer.

Contrary to the Petitioner, RCA contends that a contract bars the petition. Specifically, RCA asserts that the petition is barred by a bargaining agreement between Local Union No. 272 and RCE that covers the installers who work for RCE. In the alternative, RCA asserts that the record fails to establish that RCA and RCE are a single employer. RCA also claims that if the two entities are a single employer, a unit combining production and installer employees is inappropriate and that a combined unit of RCA and RCE employees is inappropriate. RCA further asserts that a production unit should exclude truckdrivers, but must also include various clerical and other employees located at its headquarters. These other employees are employed in the positions of draftsman, secretary, accounting employee, personnel clerk, shipping clerk, receiving clerk, purchasing clerk, estimator, and receptionist. The Union, in response, contends that the truckdriver, receiving clerk and shipping clerk positions should be included as production employees, but argues that the unit should exclude the draftsmen, estimators, accounting employees, and other clericals.

RCA's officers include President Raul Casares, Treasurer Nancy Villas, Vice-President Angel Mestres, and Vice-President Eduardo Perez. RCA does business in counties throughout Florida, including Dade, Broward, Monroe, Collier, and Lee. RCA has five production facilities, which are all located in Miami-Dade County. Two facilities are located across the street from each other at 2805 and 2600 75th Avenue. Those two facilities comprise RCA's main production facility and headquarters. Divided equally between the two sites are approximately 80 non-supervisory production and maintenance employees.

At the 2805 75th Ave. facility, there is an enclosed air-conditioned mezzanine. Approximately 15 draftsmen, a personnel clerk, 3 purchasing clerks, and 7 accounting employees work in the mezzanine. Separate doors lead to each of those areas. The managers, who work in an area below the mezzanine have their own offices. This lower area also includes sales employees, four estimators, and six secretaries. An entrance door leads from the production area to the office area. One receiving clerk and one shipping clerk are located in a small office next to

with several employers and represents employees of those employers regarding conditions of work such as wages, hours of employment, and grievances. Based on the above, I find that Shopmen's Local Union No. 698 is a labor

the main office. Next to the receiving clerk's office is the receiving door. Three maintenance employees have an office on the other side of the main office. The receptionist is located in the front of the building in an open area separated from the production area by a door. All of the production materials are received at this building.

Approximately 10 draftsmen, 1 secretary, and 40 non-supervisory production employees work in the building located at 2600 75th Avenue. The third facility, located one block away, is primarily used for storage and employs approximately three production employees. A fourth production facility, located in Hialeah, Florida, is approximately 10 miles from the first three facilities. The fifth facility, located in the Northwest section of Miami, is about 6 miles from the Hialeah facility and 10 miles from the Miami facilities.

RCA's installers, also known as erectors, do installation of windows and doors at various construction sites in Florida. At the time of the hearing, RCA employed approximately 140 installers. Juan Encinosa is the overall superintendent who is responsible for all installation work performed by RCA. He has an office at the facility located at 2805 75th Ave. Encinosa reports to his office every day, spending part of each day traveling to the jobsites. Each of RCA's jobsites has its own foreman who reports to general superintendent Encinosa. The foreman ensures that materials are received, keeps track of employee hours, tells them when and where to report to work, and delivers payroll checks. At the hearing, it was stipulated that Encinosa and the 12 foremen are supervisors under Section 2(11) of the Act

REC seeks experienced installers, but most of those hired have no prior experience. Since RCA works on high rise construction projects, a prospective employee must be able to work at heights. Prospective applicants apply to the foreman at the jobsite. If applicants have previously worked for RCA, and positions are available, the foreman has hiring authority. Otherwise, the foreman refers prospective applicants to RCA's headquarters where the applicant files an application with the personnel director. Thereafter, Encinosa hires installers as needed.

The installers perform all of their work on site. Manufactured materials are sent to the jobsites directly from overseas factories or by trucks that are based at the 75th Avenue facilities. The installers unload the trucks, hoist the windows to the installation point, and install them. The installers use tape measures, levelers, screwdrivers, and power tools, such as drills. They also use a chop saw on products that need some additional cutting before installation. The installers are also trained to do compression testing.

The installers' hours vary by jobsite, depending, in part on the local zoning laws. The installers generally start work at approximately 7:00 or 8:00 a.m. The installers wear blue T-shirts, purchased from RCA, that contain

RCA's logo. The installers wear their own pants, generally, khakis or jeans. The foremen also wear T-shirts that contain RCA's logo. One installer testified that at some jobsites foremen do not let installers work unless they wear RCA's T-shirts. Another installer testified that at one jobsite he did not wear his T-shirt despite being told by his foreman to do so. The installer, however, continued to work. A truckdriver testified that he sees most of the installers wear RCA's T-shirts. A production employee testified that when he was at jobsites he only saw some installers wearing the T-shirts. The installers also wear safety hats, and depending on the project, also wear safety harnesses.

RCA's foremen at the jobsites determine the installers' break and lunch times, which can vary by jobsite. RCA's installers receive between \$8 and \$13 per hour. They receive health benefits, but no paid sick leave or vacation time. In laying off installers, RCA considers workload, seniority, skills, and job performance. At times, to keep projects on schedule, RCA moves installers among jobsites. Generally, RCA tries to keep the installers in the same geographic area.⁵

On May 24, 1993, President Casares, on behalf of RCA, signed the Master Agreement between Ironworkers District Council of the Southeastern States, Iron Workers Local 272, and Local 402 (collectively "the Union") and Southeastern Council of Ironworker Employers, Inc., Southeast Ironworkers Subcontractors Association, Inc. (collectively "the Association"). The agreement stated that RCA was bound to the agreement, entered into on January 1, 1992, and which ran until September 30, 1993, between the Association and the Union including contributions to health, welfare, and pension funds. Local 272 Business Manager Dewey Tyler and RCA President Casares signed an addendum to the Master Agreement dated May 20, 1993, stating that the parties entered into the agreement for demolition and installation work at the Sheraton Hotel in Bal Harbour, Florida, and that once that work was finished the contract was no longer valid. Thereafter, on a few occasions, Local 272 has referred installers to RCA's construction projects. On those occasions RCA did not sign subsequent prehire agreements or contracts. Rather, the parties simply agreed to apply the terms of the current Master collective bargaining agreement

⁵ Vice-president Mestres testified, in response to a question about whether or not there was a geographic limit to the distance RCA would send an installer, "There is no limit. We try to include them as good as convenient [sic] to them as possible." He added that while it did not happen often, they would, as needed, send someone from Miami to Naples, for instance.

between the Union and the Association. Also on those occasions, the installers received the pay and benefits contained in the contract which are different from those ordinarily paid by RCA.⁶

Angel Portal oversees the production and maintenance employees assigned to the three buildings that comprise the 75th Avenue facilities, including the nearby warehouse. Portal has two assistants, Frank Gaspard, and George Gari.⁷ The maintenance employees fix things. The production employees produce the various window designs. The production employees use electric saws, compressors, power tools, punch presses, and hand tools.

The production employees are generally assigned to one of the two main buildings at the 75th Avenue facility, but sometimes work in the other building for one or two days. The production area is not air conditioned. Portal hires the production and maintenance employees. RCA does not require prior production or maintenance experience. The production and maintenance employees earn between \$6 and \$10 per hour. They work from 7:00 a.m. to 3:30 p.m., Monday through Friday, and Saturdays when needed. The production employees wear boots. Some of the production employees wear RCA T-shirts, but RCA does not require them to wear the shirts.

On rare occasions, when RCA is installing heavy windows, a few production workers will assist the driver to the jobsite. Installers do no production work and production employees do no installation work. There have not been any transfers of employees between the two positions. When the installers have problems installing windows due to a production problem, such as locks that do not work, or poor seals, the foreman at the respective jobsite contacts the production department. A few production employees are then sent to the jobsite to make the adjustments. In these circumstances, the record evidence establishes that the production workers perform no installation work.

The record evidence establishes that production employees go to the jobsites infrequently. Vice-President Angel Mestres testified that production workers are sent to a jobsite approximately once per year. One truckdriver testified that he took production workers to a jobsite four times in 20 months. A second truckdriver testified that he took production employees to a jobsite 3 times in 14 months. One production employee testified that he went to a jobsite 4 or 5 times over a 2 year period.

⁶ Under the current master agreement, as of April 1, 2000, journeymen receive between \$9.38 and \$15.35, trainees receive \$7.67, and utility ironworkers receive between \$7.67 and \$12.79. In addition, any employer working pursuant to the contract would also pay money into the Union's health and pension fund.

⁷ Armando Rodriguez supervises the Hialeah facility and Leonardo Figueroa supervises the Northwest facility. Both report to Portal. The parties stipulated that each of the plant supervisors as well as Portal's two assistants, are statutory supervisors under Section 2(11) of the Act.

Mario Tenerani, Jose Pinero, and Edmond Arcamonte supervise the draftsmen (engineers) and are responsible for hiring them. The draftsmen start at an “average” of \$10 per hour, with no degree in engineering required for hiring.⁸ They work from 8:00 a.m. to 5:00 p.m., and sometimes work overtime. The record reflects that the draftsmen wear dress clothes, ties at times, and perform no physical hands on work. Draftsmen in both 75th Avenue buildings work in office areas.

The draftsmen design products. All of RCA’s jobs are designed to certain specifications, so the designs and products used for each project vary. President Casares and Vice-President Mestres testified that for the first part of a new order the draftsmen go to the production floor and assist in the proper process for producing the order. The process, known as tooling, takes up to a few hours. President Casares also testified that when production employees have problems making products, they go to their supervisors and the respective employees and supervisors go to the draftsmen. One production employee testified, however, that he very seldom sees draftsmen on the production floor, and that the supervisors and draftsmen handle any problems directly without the production employees. The record evidence establishes that several times a year draftsmen go to installation sites to inspect the work. They have no direct contact with the installers during that time.

Angel Portal supervises the shipping clerk and the receiving clerk and is responsible for hiring them. Both clerks work at the facility located at 2800 75th Street. The clerks have a small office, as described above, and work in the production area, insuring that products are received and shipped. They gather materials for shipping and distribute materials received by hand or by using a forklift. Sometimes the receiving clerk will not know what project delivered goods are for and will check with purchasing.

Virginia Cruz, the head accountant/controller, supervises the accounting employees and the personnel clerk. Cruz is responsible for hiring them. The parties stipulated that Cruz is a supervisor under Section 2(11) of the Act. The accounting employees and personnel clerk work from 8:00 a.m. to 5:00 p.m. The personnel clerk receives employment applications, including applications from prospective production employees, and informs employees of the fringe benefits. Employees would contact the personnel clerk if they had any pay related questions or problems.

President Casares and Vice-President Mestres jointly supervise the three purchasing clerks and are responsible for hiring them. The purchasing clerks work from 8:00 a.m. to 5:00 p.m. The purchasing clerks process orders given to them by the draftsmen for raw materials and components used for the assembly of windows.

⁸ It likewise appears that experience is not necessarily a prerequisite for the hiring of a draftsman.

The receiving clerks receive copies of purchase orders. At times, the purchasing clerks go to the production area to verify an order

Marcie White supervises the secretaries and receptionist. The parties stipulated that she is a supervisor under Section 2(11) of the Act. Six of the secretaries work in the building located at 2805 75th Ave. One secretary works in the building located at 2600 75th Ave. The receptionist sits at the front of the facility located at 2805 75th Ave. The receptionist answers telephone calls and sends visitors to the appropriate area. A secretary substitutes for the receptionist when the receptionist is at lunch.

Ed Perez supervises the four estimators. The parties stipulated that Perez is a supervisor under Section 2(11) of the Act. The estimators work from 8:00 a.m. to 5:00 p.m. They price the cost of windows, materials, overhead, and labor. Prospective customers provide architectural plans and the estimators then talk to the customers to confirm the customers' needs. The estimators do not go to jobsites. The estimators try to make estimates based upon similar previous projects. At times, to prepare an estimate, the estimators walk with Angel Portas to the production area to review the process needed to perform the work. Sometimes they ask an employee about his production of a particular type of window to estimate the time that it will take to produce the customers' product. The estimators may be on the production floor several times a day or go several weeks without being on the floor. President Casares testified that the estimators spend 75 percent of their time in the office.⁹

RCA employs approximately four truckdrivers. The drivers take product from the factory to jobsites where the product is unloaded by the installers. President Casares testified that the production employees load material on carts and bring them to the trucks where they help the truckdrivers load. Two truckdrivers testified that they are responsible for bringing the materials to the trucks and loading them. The truckdrivers testified that they receive regular assistance from other truckdrivers and the shipping department, and occasional assistance from production employees. The record also reflects that on some days some drivers spend the whole day loading trucks while other drivers drive them. Once at the job site, one truckdriver testified that he helps unload trucks once per month, and otherwise he holds the windows in place so that only one gets removed at time.

⁹ The record variously indicates that the above described "office" employees earn between \$6 and \$10 or between \$8 and \$13 per hour. It is not clear, however, who earns what.

The record reflects that the truckdrivers drive 2 or 3 days a week, including one day when they drive for an entire day. When not driving trucks or loading trucks, the truckdrivers help production employees by cleaning newly prepared windows and placing plastic coating over them. One truck driver testified that all of the truckdrivers spend approximately two hours, two or three times a week helping production. The record reflects that truckdrivers are also directed by the shipping supervisor to assist in carrying delivered goods to the receiving area.

The truckdrivers apparently receive between \$7 and \$8 per hour. They generally work from 7:00 a.m. to 3:30 p.m., but their work hours can vary depending on the distance traveled to deliver products. At times, the drivers leave for a delivery at 1:00 or 2:00 a.m. They punch a time clock, but may sign in if they leave for a delivery before the time clock is accessible. They receive the same amount of break time as the other headquarters employees, but the time that they actually take it may vary due to a delivery. Angel Portal supervises the truckdrivers, and is also responsible for hiring them.¹⁰ An applicant for a truckdriver position needs a commercial truck driver's license. The truckdrivers do not enter the office area unless there is a personnel matter to deal with. They do not wear uniforms and receive the same benefits as production employees.

Production employees and other employees employed at RCA's headquarters receive benefits which include health insurance, vacation, sick leave, and seven paid holidays. None of the headquarters employees substitute for each other, except as described above. When RCA hires new employees for office positions it tries to hire employees with commensurate experience. All of the headquarters employees are paid by the hour and punch a time clock located in the production area. The two main buildings at 75th Avenue each have a time clock located in the production area. The record reflects that the draftsmen do not wait in line to punch out, but go ahead of the production employees. All of the "office" employees, including draftsmen take the same lunchtime, noon to 1:00 p.m., and breaks. The production, maintenance, and truckdriver employees take lunch from noon to 12:30 p.m., but receive the same breaks as the office employees. All of the production and maintenance, draftsmen and clerical employees at RCA's headquarters have access to a vending machine located in the facility and cart vendors located outside the facility. The office employees have access to a refrigerator and microwave located in the office area. The record evidence shows that the other employees contributed for refrigerators and microwaves in the shipping and production area.

¹⁰ Other supervisors may supervise them as well when they are at RCA's other facilities.

The record evidence shows that office personnel have a separate parking lot across from the main building. The record reflects that if non-office employees park in the lot they are asked to move their cars. The office employees also have their own restroom facilities.

RCE, incorporated in Florida in 1998, shares the same officers as RCA, including President Casares and Vice-President Mestres. The two companies also share the same main office at 2805 N.W. 75th Ave., Miami. RCE was created following the suggestion of Local 272 Business Manager Tyler that RCA bid as a subcontractor for installation work at the Diplomat Hotel in Hollywood, Florida, a project that required union employers.

Local 272 negotiated an agreement with RCE President Casares, signed on May 6, 1998, which binds RCE to the Greater South Florida Agreement between the Union and the Association entered into on October 1, 1997, and any addenda to it including those concerning pension and health care contributions, and the hiring hall agreement. The document states that the Greater South Florida agreement and any addenda are in “full force and effect” until September 30, 2000. The Greater South Florida Agreement contains a clause stating that Iron Workers District Council of the Southeastern States and its affiliated local unions are “duly authorized and recognized bargaining representatives of the Ironworker employees, whether Journeymen or Apprentices, in the territorial jurisdiction of this Agreement.”

Local 272 Business Manager Tyler did not present any authorization cards or claim that Local 272 represented a majority of employees before RCE entered into the agreement. All of the installers working at the Diplomat job work pursuant to the Master Agreement signed between RCE and the Union. At the time of the petition, approximately 75 Local 272 members were working as installers for RCE at the Diplomat site. All of those employees signed referrals from Local 272, which included a dues checkoff, and authorization for representation. The employees were not required to be union members before seeking the referral. In order to file the petition herein, Local 272 solicited, and received authorization cards from installers working at the Diplomat Hotel.

The record evidence shows that the installers employed by RCA and RCE receive the products in the same manner and that the installers perform the same type of work. The record also reflects that the windows installed at the Diplomat Hotel were produced at RCA’s 75th Avenue facility and driven to the Diplomat by RCA’s truckdrivers. It appears that RCA’s draftsmen may have been sent to the Diplomat site to check on the work as well.

The record further reflects that at least five employees appeared first on RCA's payroll and then on RCE's payroll at points during the March through May 2000 time period.¹¹

The record reflects that RCA's superintendent Encinosa is responsible for the RCE installers at the Diplomat Hotel and that at least one of the five foremen at the Diplomat site has served as supervisor for RCA. In connection with labor relations, the Union has dealt with President Casares who has acted on behalf of RCE or RCA respectively.

Single Employer Issue:

In resolving the issues in this case, I turn first to the single employer issue. The record establishes that RCA and RCE share the same officers, the same address, and that both install windows and the like.¹² RCA has had, and RCE has a relationship with the Union. In RCA's case, installers working on certain jobsites have worked subject to an agreement with the Union and in RCE's case all installers are subject to the Union contract. RCA supplied the windows for RCE to install at the Diplomat project, RCE's primary work to date, and RCA's employees such as truckdrivers have been involved in the Diplomat work. President Casares is the person in charge of dealing with the Union on behalf of both RCA and RCE. Superintendent Encinosa oversees both RCA's and RCE's installation work. At least one foreman and apparently at least five of the same employees have worked for both RCA and RCE. It further appears from the record that RCA has made fringe benefit contributions for RCE.

Based on these facts, I conclude that RCA and RCE are a single, integrated enterprise and single employer. See Naperville Ready Mix, Inc., 329 NLRB No. 19 (1999).

Contract Bar:

The Employer contends that the collective-bargaining agreement between RCE and the Union covering installers bars the petition herein. The Employer appears to acknowledge that the contract was a pre-hire agreement at the time it was signed¹³ and does not dispute the fact that an 8(f) contract does not bar a representation petition. The Employer apparently argues, however, that because the Petitioner has obtained authorization cards from RCE's installers (at least in part in anticipation of the filing of this petition), that the relationship converted to a 9(a) relationship.

¹¹ There are additional records in evidence for 1998 through February 2000 reflecting payments by RCA to Local 272's fringe benefit fund. There is also evidence in the record that RCA made at least some of these payments on behalf of RCE.

¹² RCA also acknowledges common ownership in its brief.

¹³ No language in the contract or evidence indicates to the contrary.

Contrary to the Employer, I conclude that there is no contract bar. Thus, the evidence fails to establish that “the union unequivocally demanded recognition as the employees’ 9(a) representative and that the employer unequivocally accepted it as such.” J & R Tile, 291 NLRB 1034, 1036 (1988). See also H. Y. Floors & Gameline Painting, 331 NLRB No. 44 (2000).

Unit Issues:

Contrary to the Petitioner, the Employer contends that installers and production employees should not be included in the same unit. I agree that production and maintenance employees should be included in a unit separate from installers. Installers have different skills than production employees and work in the field, performing construction work. Production employees, with few exceptions, work indoors and do not have contact with installers. The record shows no interchange between installers and production employees. Installers and production employees have different benefits,¹⁴ and have different rates of pay. Superintendent Encinosa oversees the installers while Angel Portal oversees most production and maintenance employees. Furthermore, both RCA and RCE have had collective bargaining relationships involving separate units of installers. Accordingly, I shall direct an election in a unit of production and maintenance employees separate from installers.

Contrary to the Petitioner, the Employer contends that various clerical and other employees employed in the office areas of its headquarters share a community of interest with production and maintenance employees so as to require their inclusion in a production unit, but that truckdrivers should be excluded from the unit. The parties are in agreement, however, that the shipping clerk and receiving clerk should be included in a unit with production and maintenance employees. I agree as well that these plant clericals should be included in the production and maintenance unit.

The record contains no evidence concerning the duties of the secretaries and accounting employees who work in the air conditioned mezzanine area of the plant. Virginia Cruz supervises the accounting employees and personnel clerks, while Marcie White supervises the secretaries and receptionist. In view of this lack of evidence concerning the job duties of secretaries and accounting employees, and since the personnel clerk and receptionist work in the same area and share supervision with the others, I shall allow employees in all four of these categories to vote subject to challenge.

¹⁴ When telling the hearing officer that RCA’s (non-union) installers receive no paid sick leave or paid vacations, President Casares explained “No, ma’am. They are constructions workers.”

The purchasing clerks work in the air conditioned mezzanine under the supervision of President Casares and Vice-President Mestres. They perform clerical work related to the purchase of raw materials and window components. Although they occasionally go into the production area to verify orders, I find that purchasing clerks are office clericals and shall exclude them from the production and maintenance unit. Mosler Safe Company, 188 NLRB 650 (1971). Thus, they primarily work in an area separate from production employees, are separately supervised, have distinct working conditions such as different work hours and a longer lunch break, and perform distinct clerical duties.

The estimators price the cost of windows, materials, overhead and labor. Like the purchasing clerks, they primarily work in the air conditioned mezzanine at 2805 75th Avenue, and have supervision and working conditions which are distinct from those of production and maintenance employees. There is no evidence of interchange between estimators and production and maintenance employees. Accordingly, I shall exclude them from the production and maintenance unit. See Weldun International, 321 NLRB 733 (1996).

The draftsmen also are stationed in office areas and are separately supervised. They work the same hours as purchasing clerks and estimators. They design products. The record does not include any evidence of interchange between draftsmen and production and maintenance employees. Based on the record and notwithstanding the fact that they spend some time on the production floor, I find that the evidence fails to establish that the draftsmen have such a strong community of interest with production and maintenance employees so as to require their inclusion in the unit. Accordingly, I shall exclude them from the production and maintenance unit. See Container Research Corp., 188 NLRB 586 (1971); Dempster Bros., Inc., 154 NLRB 688 (1965).

Contrary to the Petitioner, the Employer contends that truckdrivers should be excluded from the production and maintenance unit because they lack a community of interest with production employees. However, production and maintenance employees and truckdrivers are all supervised by Angel Portal. Moreover, truckdrivers regularly assist production employees with their work. Furthermore, they generally work the same hours as production and maintenance employees and have the same one-half hour lunch break. . Based on these facts, I shall include the truckdrivers in the production and maintenance unit. See Atchison Lumber and Logging, 215 NLRB 572 (1974); Marks Oxygen, 147 NLRB 228 (1964).

With respect to the installers, the Employer argues that bargaining history dictates that only a limited unit of RCE installers at the Diplomat is appropriate. However, the bargaining agreement between RCE and the Union is

not limited by its terms to the Diplomat site and, in fact, the record reflects that some RCE employees have worked at other sites as well.

The Employer further argues that bargaining history precludes combining RCA and RCE installers in the same unit and requires that RCA's installers may only be represented separately on a jobsite by jobsite basis. However, a brief history of collective bargaining is accorded less weight than a longer one. See Jos. Schlitz Brewing Co., 206 NLRB 928 (1973); Heublein, Inc., 119 NLRB 1337 (1958). RCA's relationship with the Union was initially pursuant to an 8(f) agreement entered into on May 24, 1993, which by its terms was effective through September 30, 1993, and only until completion of the work on the Sheraton Hotel in Bal Harbor. Thereafter, there were no written agreements between RCA and the Union. A bargaining history which is based on an oral contract is also not controlling. See Inyo Lumber, 92 NLRB 1267 fn 3 (1951). Thus, RCA's history of bargaining with the Union does not appear to be particularly significant. Also see Dezcon, Inc., 295 NLRB 109 (1989)¹⁵

As for RCE's history of collective bargaining with the Union, while it is a factor to be considered herein, I find that it is not dispositive of the unit question. In so finding, I note the following comments by the Board in Dezcon, Inc., 295 NLRB at 112:

Nor do we accept the Employer's contention that the more recent trend of entering into project-by project agreements constitutes determinative bargaining history under *Deklewa*, supra. The Board's remarks on unit scope in *Deklewa* should not be interpreted so as to rob construction industry employees of meaningful choice, simply because an employer has unilaterally decided to limit its relations with craft unions to project agreements.¹⁶

In the present case, the Employer has tried to "pick and choose" when it would deal with the Union, which it could do in an 8(f) context. However, the Petitioner now seeks to establish a Section 9(a) relationship pursuant to a Board directed election. The alternative to directing an election in a combined unit of all the Employer's installers appears to be to direct an election in separate units of RCA's installers and RCE's installers. While RCE's bargaining history would tend to support that latter outcome, and RCE's installers have worked under certain working conditions not shared by RCA's non-union installers, in all of the circumstances of this case, it

¹⁵ A multi-site unit including RCA's installers otherwise appears appropriate. Thus, Encinosa hires all installers not previously employed by RCA and oversees and visits the sites. The benefits received by all (non-union) installers are the same, installers wear RCA's T-shirts, and sometimes installers are transferred among jobsites..

¹⁶ As noted above, the agreement with RCE is not a project agreement, although the arrangements with RCA have been on a project by project basis.

does not appear that two separate units of installers, all employed by the same single employer, would be appropriate. Thus, all installers work under Encinosa's ultimate supervision, doing the same kind of work, supported by RCA employees such as truckdrivers. Furthermore, some of RCA's installers have worked under the terms and conditions of employment of the Union's contract, as have RCE's installers.¹⁷

In view of the above, I find that the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A:

All full-time and regular part-time production and maintenance employees and truckdrivers employed by the Employer at its facilities in Miami-Dade County, Florida, including the shipping clerk and the receiving clerk; but excluding purchasing clerks, estimators, draftsmen, all other office clerical employees,¹⁸ guards and supervisors as defined in the Act.

UNIT B:

All full-time and regular part-time installers, including installers who meet the eligibility formula set forth in Daniel Construction, 133 NLRB 264 (1961), as modified, 167 NLRB 1078 (1967),¹⁹ employed by the Employer (RC Aluminum Industries, Inc. and RC Erectors, Inc.); but excluding office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the undersigned among the employees in the units determined appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees in Unit B who were employed 30 days or more within the 12 months preceding the eligibility date for the election, or those who had some employment in those 12 months and have been employed for 45 days or more within the 24-month period immediately preceding the eligibility date, excluding those who were terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as

¹⁷ The payroll records of the five employees mentioned above who appear on the payrolls of both RCA and RCE since March 2000 reflect that all had union fringe benefit contributions made for them by RCA, as well as by RCE.

¹⁸ As noted above, the secretaries, receptionist, accounting employees and personnel clerk may vote subject to challenge.

¹⁹ This formula was ratified in Steiny & Co., 308 NLRB 1323 (1992), and is set forth below in the Direction of Elections.

such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.²⁰ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Local Union No. 272 and Shopmen's Local Union No. 698 of the International Association of Bridge, Structural, Ornamental, and Reinforcing Ironworkers, AFL-CIO.

DATED at Tampa, Florida, this 23rd day of June 2000.²¹

/s/ Rochelle Kentov

Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 East Kennedy Boulevard, Suite 530
Tampa, FL 33602

177 1633 5075
347 4080 3300
440 1760 6260
440 1760 1960
440 1780 3350

²⁰ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that two (2) copies of each alphabetized election eligibility list containing the full names and addresses of all eligible voters in each of the units found appropriate, shall be filed by the Employer with the Regional Director for Region 12 within seven (7) days of the date of this Decision and Direction of Elections. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Regional Office on or before June 30, 2000. No extension of time to this provide these lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing such lists.

²¹ Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by July 7, 2000.